

FILED
2011 APR 22 P 3:51
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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NP

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101 California Street
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Attorneys for Defendant
LOWE'S HIW, INC.

E-filing

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

RS

CV 11

1996

MARTIN PETERSEN, an individual, on behalf
of himself and all others similarly situated

Plaintiff,

vs.

LOWE'S HIW, INC, a Washington
Corporation; and DOES 1-50, inclusive,

Defendants.

Case No. _____

**DEFENDANT LOWE'S HIW, INC.'S
NOTICE OF REMOVAL OF CIVIL
ACTION**

Removed from County of San Francisco
Superior Court, Case No. CGC-11-509122

Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5894

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2
3 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1332(d)(2), Defendant Lowe's HIW,
4 Inc. ("Defendant"), hereby removes the above-captioned matter from the Superior Court of
5 California, County of San Francisco, to this Court. In support of its request, Defendant states as
6 follows:

7 **I. INTRODUCTION**

8 1. This case is hereby removed from state court to federal court under 28 U.S.C.
9 § 1332(d)(2) ("Class Action Fairness Act") because diversity of citizenship exists between
10 Defendant on the one hand, and one or more members of the putative class on the other hand, and
11 the amount in controversy exceeds \$5,000,000, exclusive of interest and costs. The citizenship of
12 Doe Defendants should be disregarded for purposes of removal.

13 **II. PROCEDURAL HISTORY AND BACKGROUND FACTS**

14 **A. The State Court Action In This Case**

15 2. On March 11, 2011, an action was commenced in the Superior Court of the
16 State of California in and for the County of San Francisco entitled *Martin Petersen v. Lowe's*
17 *Companies, Inc.*, as Case No. CGC-11-509122. A true and correct copy of the Complaint and
18 Summons is attached hereto as respectively Exhibit A and Exhibit B. Lowe's Companies, Inc. was
19 served with the Complaint and Summons on March 23, 2011.

20 3. On April 21, 2011, Plaintiff filed an amended complaint naming Lowe's HIW,
21 Inc. A true and correct copy of the Amended Complaint is attached hereto as Exhibit F. Lowe's
22 HIW, Inc. received the Amended Complaint on April 22, 2011.

23 4. The Amended Complaint seeks recovery of monetary damages and other
24 relief against Defendant in conjunction with class claims for alleged violations of California Civil
25 Code § 1747.08, common law negligence, invasion of privacy, and unlawful intrusion. In particular,
26 Plaintiff alleges that Defendant requested his ZIP code, as well as the ZIP codes of similarly situated
27 persons, in connection with accepting a credit card as payment for goods and services at "Lowe's"
28 stores in California [hereinafter "Accused Credit Transactions."].

5. Defendant has not filed any process, pleadings, or other documents in the State Court.

III. BASIS FOR FEDERAL COURT JURISDICTION

A. The Class Action Fairness Act—The Parties

6. Defendant is informed and believes that Plaintiff Martin Petersen was, at the time of the filing of this action, and still is, a citizen of California. *See* Exhibit F Compl. ¶ 7.

7. Defendant Lowe's HIW, Inc. was, at the time of the filing of this action, and still is, a citizen of Washington, in that it is incorporated in Washington and maintains its principal place of business in Washington. *See* concurrently filed Declaration of John Manna, ¶ 3.

8. The citizenship of Doe Defendants 1-50, inclusive, should be disregarded for the purpose of establishing removal jurisdiction based on diversity of citizenship. 28 U.S.C. § 1441(a). In addition, the allegations in the Complaint with respect to the potential "Doe" defendants are so general that no clue is given as to their identity or relationship to the claims. *See* Exhibit F Compl. ¶ 10.

9. The jurisdictional bar under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4), is inapplicable. Subparagraph (A) of that section is not satisfied because Defendant is the only defendant in this action and Defendant is not a citizen of the state in which this action was filed. *See* 28 U.S.C. § 1332(d)(4)(A)(i)(II)(cc).

10. Likewise, Subparagraph (B) of 28 U.S.C. § 1332(d)(4) also is not satisfied because Defendant is not a citizen of the State of California.

B. The Class Action Fairness Act—The Amount In Controversy

10. Plaintiff did not specifically allege an aggregate amount of damages in his Complaint. Rather, Plaintiff claims that he "is entitled to civil penalties in amounts of up to one thousand dollars (\$1,000) per violation pursuant to California Civil Code section 1747.08(e)." Exhibit F Compl. ¶ 24.

11. Defendant believes that more than 5,000 Accused Credit Transactions occurred at Lowe's HIW, Inc. stores in California during the one year period prior to filing the Complaint in this action. *See* concurrently filed Declaration of John Manna, ¶ 4. Because Plaintiff

1 seeks on behalf of himself and all similarly situated persons up to \$1,000 per Accused Credit
2 Transaction in damages, a reasonable certainty exists that the amount in controversy in this action
3 exceeds \$5,000,000 in damages, exclusive of interest and costs. Thus, the amount in controversy
4 requirement is met. *See* 28 U.S.C. § 1332(d)(2).

5 **III. BASIS FOR FEDERAL COURT JURISDICTION**

6 12. This Court is part of the “district and division” embracing the place where this
7 action was filed — County of San Francisco, California. *See* 28 U.S.C. § 1446(a).

8 13. Pursuant to 28 U.S.C. § 1446(a), Defendant attached the Complaint as Exhibit
9 “A,” the Summons as Exhibit “B,” the Civil Case Cover Sheet as Exhibit “C,” the Notice to Plaintiff
10 as Exhibit “D”, the Application for Approval of Complex Litigation Designation as Exhibit “E,” and
11 Amended Complaint as Exhibit “F.” These are the only processes, pleadings, or orders in the State
12 Court’s file that have been served on or received by Defendant up to the date of filing this Notice of
13 Removal.

14 14. In accordance with 28 U.S.C. § 1446(b), this Notice is timely filed with this
15 Court. Pursuant to 28 U.S.C. § 1446(b), “a notice of removal may be filed within thirty days after
16 receipt by the defendant, through service or otherwise.” 28 U.S.C. § 1446(b). Defendant received
17 Plaintiff’s Amended Complaint on April 22, 2011, and this Notice of Removal was filed on April 22,
18 2011. Accordingly, this Notice is timely.

19 15. As required in 28 U.S.C. § 1446(d), Defendant will provide written notice of
20 the filing of this Notice of Removal to James R. Patterson, counsel of record for the Plaintiff, and
21 will promptly file a copy of this Notice of Removal with the Clerk for the Superior Court of
22 California in and for the County of San Francisco.

23 16. This Notice of Removal is signed pursuant to Federal Rule of Civil
24 Procedure 11. *See* 28 U.S.C. § 1446(a).

25 17. Assignment of this action to the San Francisco Division of the United States
26 District Court for the Northern District of California is appropriate because this action was
27 originally filed in the Superior Court of California, County of San Francisco. Civil L.R. 3-2(c) and
28 (d), 3-5(b).

1 18. No admission of fact or liability is intended by this Notice of Removal, and all
2 defenses, affirmative defenses and motions are hereby expressly reserved by Defendant including
3 but not limited to the right to challenge jurisdiction and venue.

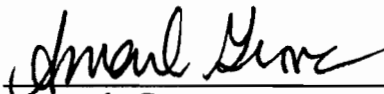
4 19. Based upon the foregoing, this Court has jurisdiction over this matter pursuant
5 to 28 U.S.C. § 1332, and the claims may be removed to this Court under 28 U.S.C. § 1441.

6 **IV. REQUEST FOR ADDITIONAL ARGUMENTS AND EVIDENCE, IF NECESSARY.**

7
8 20. In the event that Plaintiff files a request to remand, or the Court considers
9 remand *sua sponte*, Defendant respectfully requests the opportunity to submit such additional
10 argument or evidence in support of removal.

11 Dated: April 22, 2011

WINSTON & STRAWN LLP

12
13 By: 
14 Amanda Groves
15 Attorneys for Defendant
16 LOWE'S HIW, INC..
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Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5894

Exhibit A

MAR. 11. 2011 1:16PM A & A LEGAL SERVICE 6506974640

NO. 1689 P. 4

ORIGINAL

FILED
Superior Court of California
County of San Francisco

MAR 11 2011

CLERK OF THE COURT

BY: Param Nott
Deputy Clerk

1 James R. Patterson, State Bar No. 211102
 2 HARRISON PATTERSON & O'CONNOR LLP
 3 402 West Broadway, 29th Floor
 4 San Diego, CA 92101
 5 Tel: (619) 756-6990
 6 Fax: (619) 756-6991

7
 8 Attorneys for Plaintiff and the Class

9
 10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 MARTIN PETERSEN, an individual, on behalf
 13 of himself and all others similarly situated,

14 Plaintiff,

15 vs.

16 LOWE'S COMPANIES, INC., a North Carolina
 17 Corporation; and DOES 1 through 50, inclusive,

18 Defendants.

19 CASE NO. CGC - 11 - 509122

20 CLASS ACTION

21 CLASS ACTION COMPLAINT FOR:

- 22 (1) VIOLATION OF CALIFORNIA
 23 CIVIL CODE § 1747.08;
 24 (2) COMMON LAW NEGLIGENCE;
 25 (3) INVASION OF PRIVACY; AND
 26 (4) UNLAWFUL INTRUSION

27 FILE VIA FAX

28 Plaintiff Martin Petersen, on behalf of himself and all others similarly situated, complains and alleges upon information and belief based, among other things, upon the investigation made by Plaintiff by and through his attorneys, as follows:

29 I. INTRODUCTION

30 1. California Civil Code section 1747.08 generally states that when a merchant is engaged in a retail transaction with a customer, the merchant may neither (1) request personal identification information from a customer paying for goods with a credit card, and then record that personal identification information upon the credit card transaction form or otherwise; nor (2) require as a condition to accepting the credit card as payment the cardholder to provide the customer's personal identification information which the retailer causes to be written, or

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1 otherwise records upon the credit card transaction form or otherwise.¹

2 2. Defendants operate retail stores throughout the United States, including
3 California. Defendants are engaging in a pattern of unlawful and deceptive business practices by
4 requesting and recording personal identification information, including zip codes, from
5 customers using credit cards at the point-of-sale in Defendants' retail establishments.

6 3. On information and belief, Defendants use the zip codes and additional
7 information obtained from customers' credit cards, including their names, to obtain their
8 residential home addresses. Defendants obtain credit card customers' addresses with the help of
9 third-party vendors such as Experian or Acxiom that maintain proprietary software and databases
10 containing hundreds of millions of individual consumers' contact information. These vendors
11 typically require merchants to confirm that they have obtained customers' informed consent to
12 utilize their personal identification information before it is shared with the vendor.

13 4. Defendants do not disclose their true intentions behind requesting customers' zip
14 codes, including that it will be used to obtain customers' home addresses, or shared with third
15 parties. Rather, Defendants rely on consumers' incorrect assumption that Defendants want their
16 zip codes to verify their identities for security purposes and as part of the credit card transaction.
17 But, on information and belief, Defendants are not using credit card customers' zip codes for
18 security measures, and this information is certainly not necessary to process customers' credit
19 cards.

20 5. Plaintiff does not seek any relief greater than or different from the relief sought
21 for the Class of which Plaintiff is a member. If successful, this action will enforce an important
22 right affecting the public interest and will confer a significant benefit, whether pecuniary or non-
23 pecuniary, on a large class of persons. Private enforcement is necessary and places a

24 ¹ California Civil Code section 1747.08 states in relevant part:

25 "(a) Except as provided in subdivision (e), no person, firm, partnership, association, or corporation which accepts
26 credit cards for the transaction of business shall do either of the following:

27 (2) Request, or require as a condition to accepting the credit card as payment in full or in part for goods or services,
28 the cardholder to provide personal identification information, which the person, firm, partnership, association, or
corporation accepting the credit card writes, causes to be written, or otherwise records upon the credit card
transaction form or otherwise.

(b) For purposes of this section 'personal identification information,' means information concerning the cardholder,
other than information set forth on the credit card, and including, but not limited to, the cardholder's address and
telephone number."

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disproportionate financial burden on Plaintiff in relation to Plaintiff's stake in the matter.

II. JURISDICTION AND VENUE

6. Plaintiff is informed and believes that defendant Lowe's Companies, Inc. is a North Carolina Corporation with its corporate headquarters in Mooresville, NC.

7. Plaintiff is a resident of California and entered into credit card transactions at one or more of Defendants' retail locations in California.

8. Defendants have accepted credit cards for the transaction of business throughout California, including in the County of San Francisco.

9. All injuries occurred in California, including the County of San Francisco, which has caused both obligations and liability to arise in the County of San Francisco.

A. Doe Defendants

10. Except as described herein, Plaintiff is ignorant of the true names of Defendants sued as DOES 1 through 50, inclusive, and the nature of their wrongful conduct, and therefore sues these DOE Defendants by such fictitious names. Plaintiff will seek leave of the Court to amend this complaint to allege their true names and capacities when ascertained.

B. Agency/Aiding And Abetting

11. At all times herein mentioned, Defendants, and each of them, were an agent or joint venturer of each of the other Defendants, and in doing the acts alleged herein, were acting within the course and scope of such agency. Each defendant had actual and/or constructive knowledge of the acts of each of the other Defendants, and ratified, approved, joined in, acquiesced and/or authorized the wrongful acts of each co-Defendant, and/or retained the benefits of said wrongful acts.

12. Defendants, and each of them, aided and abetted, encouraged and rendered substantial assistance to the other Defendants in breaching their obligations to Plaintiff and the Class, as alleged herein. In taking action, as particularized herein, to aid and abet and substantially assist the commissions of these wrongful acts and other wrongdoings complained of, each of the Defendants acted with an awareness of his/its primary wrongdoing and realized that his/her/its conduct would substantially assist the accomplishment of the wrongful conduct,

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1 wrongful goals, and wrongdoing.

2 **III. CONDUCT GIVING RISE TO VIOLATIONS OF THE LAW**

3 **A. Plaintiff's Contact with Defendant**

4 13. On at least one occasion within the last 12 months, Plaintiff went shopping at one
5 of Defendants' retail stores located in the state of California.

6 14. Plaintiff proceeded to the cashiers' section of Defendants' store to pay for the
7 selected merchandise with a credit card.

8 15. During the credit card transaction, and as part of Defendants' policy, Defendants'
9 cashier requested personal identification information from Plaintiff in the form of Plaintiff's zip
10 code, without informing Plaintiff why the information was being requested.

11 16. Plaintiff believe the requested information was necessary to complete the credit
12 card transaction and provided Plaintiff's zip code to Defendants' cashier.

13 17. The cashier typed and recorded Plaintiff's zip code into an electronic cash register
14 at the checkout counter adjacent to both the employee and Plaintiff.

15 18. Plaintiff then completed the transaction with the cashier and left the store with the
16 purchased merchandise.

17 **IV. PLAINTIFF'S CLASS ACTION ALLEGATIONS**

18 19. Plaintiff brings this class action against Defendants, pursuant to California Code
19 of Civil Procedure section 382, on behalf of all persons from whom Defendants requested and
20 recorded personal identification information in conjunction with a credit card transaction in
21 California (herein referred to as the "Class"). Excluded from the Class are Defendants, their
22 corporate parents, subsidiaries and affiliates, officers and directors, any entity in which
23 Defendants have a controlling interest, and the legal representatives, successors or assigns of any
24 such excluded persons or entities.

25 20. The members of the Class are so numerous that joinder of all members is
26 impracticable. While the exact number of Class members is unknown to Plaintiff at this time,
27 such information can be ascertained through appropriate discovery, from records maintained by
28 Defendants.

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21. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all members is impracticable, the likelihood of individual Class members prosecuting separate claims is remote and individual Class members do not have a significant interest in individually controlling the prosecution of separate actions. Relief concerning Plaintiff's rights under the laws alleged herein and with respect to the Class as a whole would be appropriate. Plaintiff knows of no difficulty to be encountered in the management of this action which would preclude its maintenance as a class action.

22. There is a well-defined community of interest among the members of the Class because common questions of law and fact predominate, and Plaintiff's claims are typical of the Class claims.

23. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- a. whether Defendants requested zip codes from credit card customers;
- b. whether Defendants recorded credit card customers zip codes;
- c. whether Defendants' conduct violates California Civil Code section 1747.08;
- d. what was done with the collected information, including whether it was stored, sold, or otherwise disseminated to others; and
- e. the proper amount of civil penalties to be awarded to Plaintiff and the Class.

24. Plaintiff's claims are typical of those of the other Class members because Plaintiff, like every other Class member, was exposed to virtually identical conduct and is entitled to civil penalties in amounts of up to one thousand dollars (\$1,000) per violation pursuant to California Civil Code section 1747.08(e).

25. Plaintiff can fairly and adequately represent the interests of the Class, has no conflicts of interest with other Class members, and has retained counsel competent and experienced in class action litigation.

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29th Floor
San Diego, CA 92101

1 55. As a proximate result of the above acts, Plaintiff and the Class' personal
2 identification information was used by Defendants for their own profit, and to the detriment of
3 Plaintiff and the Class, resulting in damages in the amount to be proven at trial.

4 56. Unless and until enjoined, and restrained by order of this Court, Defendants'
5 wrongful conduct will continue to cause Plaintiff and the Class great and irreparable injury in
6 that their private personal information, including their home addresses and billing information
7 will remain at risk. Defendants will continue to use this unlawfully obtained information for
8 their own purposes and profit, it will be sold and disclosed to others, and it may be stolen and
9 used for identity theft and credit card fraud. Plaintiff and the Class have no adequate remedy at
10 law for the injuries in that a judgment for the monetary damages will not end this unlawful
11 intrusion.

12 **V. PRAYER FOR RELIEF**

13 1. That the Court certifies this action as a class action appointing Plaintiff as the
14 Class Representative and Plaintiff's counsel as Class counsel;

15 2. For an award to Plaintiff and to each member of the Class the civil penalty to
16 which he or she is entitled under California Civil Code section 1747.08(e);

17 3. For general damages according to proof;

18 4. Restitution and disgorgement any ill-gotten profits from Defendants to the extent
19 permitted by applicable law, together with interest thereon from the date of payment;

20 5. That the Court preliminarily and permanently enjoins Defendants from engaging
21 in the conduct alleged herein;

22 6. Other injunctive and declaratory relief as may be appropriate;

23 7. For distribution of any moneys recovered on behalf of the Class of similarly
24 situated consumers via fluid recovery or *cy pres* recovery where necessary to prevent Defendants
25 from retaining the benefits of their wrongful conduct;

26 8. For an award of attorneys' fees as authorized by statute including, but not
27 limited to, the provisions of California Code of Civil Procedure § 1021.5, and as authorized
28 under the "common fund" doctrine;

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- 1 9. For costs of the suit;
2 10. For prejudgment interest at the legal rate;
3 11. And for such other relief as the Court may deem proper.

4 Date: March 10, 2011

HARRISON PATTERSON & O'CONNOR LLP

6 By: James R. Patterson
Attorneys for Plaintiff

HARRISON PATTERSON & O'CONNOR LLP
402 West Broadway
29th Floor
San Diego, CA 92101

Exhibit B

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

LOWE'S COMPANIES, INC. a North Carolina Corporation; and DOES 1 through 50, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
MARTIN PETERSON, an individual, on
behalf of himself and all others similarly situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **(AVISO!)** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto al desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucaria.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucaria.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California, County of San Francisco
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER:
(Número del Caso):
CGC-11-509122

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

James R. Patterson, Esq., HARRISON PATTERSON & O'CONNOR LLP
402 West Broadway, 29th Floor, San Diego, CA 92101
Te: 619-756-6990 Fax: 619-756-6991

DATE:

(Fecha) MAR 16 2011

CLERK OF THE COURT

Clerk, by
(Secretario)

CAROLYN BALISTRENI

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under:

<input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):

Exhibit C

MAR. 11. 2011 1:15PM A LA LEGAL SERVICE 6506974640

NO. 1689 P. 2

ORIGINAL

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): James R. Patterson (SBN: 211102) HARRISON PATTERSON & O'CONNOR LLP 402 West Broadway, 28 th Floor San Diego, CA 92101 TELEPHONE NO.: 619-756-6990 FAX NO.: 619-756-6991 ATTORNEY FOR (Name): Plaintiff and the Class		FILED Superior Court of California County of San Francisco MAR 11 2011 CLERK OF THE COURT BY: <i>Pascam Natt</i> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		
CASE NAME: MARTIN PETERSON V. LOWE'S COMPANIES, INC.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited Amount demanded exceeds \$25,000 <input type="checkbox"/> Limited (Amount) demanded is \$25,000 or less	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)	CASE NUMBER: C6C-11-509122 JUDGE: DEPT: FILED BY FAX

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<input type="checkbox"/> Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <input type="checkbox"/> Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (46) <input type="checkbox"/> Other PIP/DWD (23) <input checked="" type="checkbox"/> Non-PIP/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (06) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (26) <input type="checkbox"/> Other non-PIP/DWD tort (35) <input type="checkbox"/> Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<input type="checkbox"/> Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <input type="checkbox"/> Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (25) <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <input type="checkbox"/> Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<input type="checkbox"/> Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxics tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) <input type="checkbox"/> Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <input type="checkbox"/> Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Type of remedies sought (check all that apply):
 a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 4
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-018.)

Date: March 10, 2011

James R. Patterson

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

Exhibit D

CASE NUMBER: CGC-11-509122 MARTIN PETERSEN, VS. LOWE'S COMPANIES, INC., A NOR

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: AUG-12-2011

TIME: 9:00AM

**PLACE: Department 610
400 McAllister Street
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

**IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL.
(SEE LOCAL RULE 4)**

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

See Local Rules 3.6, 6.0 C and 10 D re stipulation to commissioners acting as temporary judges

Exhibit E

James R. Patterson, State Bar No. 211102
 HARRISON PATTERSON & O'CONNOR LLP
 402 West Broadway, 29TH Floor
 San Diego, CA 92101
 Tel: (619) 756-6990
 Fax: (619) 756-6991

FILED 40
 Superior Court of California
 County of San Francisco

APR 11 2011

CLERK OF THE COURT
 BY: *[Signature]*

Attorneys for Plaintiff and the Class

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MARTIN PETERSEN, an individual, on behalf
 of himself and all others similarly situated,

Plaintiff,

vs.

LOWE'S COMPANIES, INC., a North Carolina
 corporation; and DOES 1 through 50, inclusive,

Defendants.

CASE NO. CGC-11-509122

CLASS ACTION

**APPLICATION FOR APPROVAL OF
 COMPLEX LITIGATION
 DESIGNATION**

Complaint Filed: March 11, 2011

Plaintiff MARTIN PETERSEN, (hereinafter referred to as "Plaintiff"), on behalf of himself and all others similarly situated, submits this Application for Approval of Complex Litigation Designation (hereinafter referred to as the "Application") so that the Court may issue an Order Designating this Class Action as "Complex" pursuant to California Rule of Court 3.400 *et seq.*

I. INTRODUCTION

This action is a consumer Class Action, wherein Plaintiff alleges that Defendant LOWE'S COMPANIES, INC. (hereinafter referred to as "Defendant") engaged in, and continues to engage in, a practice of requesting and recording the personal identification information, in the form of zip codes, of their California customers who use a credit card in Defendant's retail stores. Plaintiff contends that this conduct violates California Civil Code section 1747.08, which

1 prohibits retailers from requesting and recording the personal identification information,
 2 including the zip codes, of any consumer who purchases goods with a credit card.¹ *See also*
 3 *Pineda v. Williams-Sonoma Stores, Inc.*, (2011) 51 Cal.4th 524. Plaintiff seeks, on behalf of
 4 herself and a putative class of California consumers, statutory civil penalties of up to \$1,000.00
 5 per violation.

6 **II. THIS ACTION MEETS THE CRITERIA FOR THE COMPLEX CASE**
 7 **DESIGNATION**

8 A "Complex Case" is an action that requires exceptional judicial management to avoid
 9 placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs
 10 reasonable, and promote effective decision-making by the court, the parties and counsel. Cal. R.
 11 Ct. 3.400.

12 California Rule of Court 3.400(b) states that in deciding whether an action is a complex
 13 case, the court shall consider, among other things, whether the action is likely to involve:

- 14 (1) Numerous pretrial motions raising difficult or novel legal issues that will be
 15 time-consuming to resolve;
- 16 (2) Management of a large number of witnesses or a substantial amount of
 17 documentary evidence;
- 18 (3) Management of a large number of separately represented parties;
- 19 (4) Coordination with related actions pending in one or more courts in other
 20 counties, states, or countries, or in a federal court; or
- 21 (5) Substantial post-judgment judicial supervision.

22 ///

23 ///

24 ///

25 ¹ California Civil Code section 1747.08 states in relevant part:

26 "(a) Except as provided in subdivision (c), no person, firm, partnership, association, or corporation which accepts
 credit cards for the transaction of business shall do either of the following:

27 (2) Request, or require as a condition to accepting the credit card as payment in full or in part for goods or services,
 the cardholder to provide personal identification information, which the person, firm, partnership, association, or
 corporation accepting the credit card writes, causes to be written, or otherwise records upon the credit card
 transaction form or otherwise.

28 (b) For purposes of this section 'personal identification information,' means information concerning the cardholder,
 other than information set forth on the credit card, and including, but not limited to, the cardholder's address and
 telephone number."

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(A) This Case is Complex Because Numerous Pretrial Motions Raising Difficult Or Novel Legal Issues Will Be Made By Each Party and Will Be Time Consuming To Resolve

Because this action is styled as a *Class Action*, it will necessarily involve a complex and detailed motion for class certification by Plaintiff - and most likely opposed by Defendant. Should the case be resolved through a settlement either before class certification or after, the parties will necessarily bring motions for preliminary approval of a settlement and a motion for final approval of any settlement. Additionally, it is likely that dispositive motions will be filed by the parties regarding certain claims or defenses.

Accordingly, the numerous pretrial motions involving novel or difficult legal issues warrant the Complex Case designation.

(B) Management of a Large Number of Witnesses or a Substantial Amount of Documentary Evidence

In this action, Plaintiff seeks to represent California consumers, which will likely include hundreds of thousands of Class members, whose personal identification information was requested and recorded by Defendant. Plaintiff will necessarily seek the production of a *substantial* amount of documentary evidence (e.g., transaction records, customer accounts, policy manuals, software manuals, etc.) to establish their allegations in the Complaint and to support the motion for class certification. Accordingly, it is believed that Plaintiff will gather a substantial amount of evidence that will be used in their motion for class certification, in any potential class settlement, and/or trial of this action.

(C) Substantial Post-Judgment Judicial Supervision

If Plaintiff prevails at trial, or if the case is resolved through settlement, the Court may be required to engage in post-judgment supervision to assure that Class benefits have been properly provided to the Class and that any unpaid residuals be distributed to the Class or to non-profit organizations, as the Court is required to do pursuant to Code of Civil Procedure section 384.

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1 **III. THIS ACTION IS ALREADY PROVISIONALLY DESIGNATED AS A**
 2 **"COMPLEX CASE"**

3 California Rule of Court 3.400(c) states that an action is provisionally a "complex case"
 4 if it involves claims involving Class Actions. Cal. R. Ct. 3.400(c)(6). While the provisional
 5 designation is not mandatory, it appears that the only condition in which a class action would not
 6 be considered "complex" is if the court has significant experience in resolving like claims
 7 involving similar facts and the management of those claims has become routine. Cal. R. Ct.
 8 3.400(d). Accordingly, Plaintiff merely asks this Court to modify the provisional complex
 9 designation to a permanent designation.

10 **IV. CONCLUSION**

11 Based upon the foregoing, Plaintiff respectfully requests that the Court designate the
 12 above-entitled consumer Class Action as "Complex" pursuant to Rule 3.400 of the California
 13 Rules of Court.

14 Date: April 7, 2011

HARRISON PATTERSON & O'CONNOR LLP

15 By: 
 16 _____

James R. Patterson
 Attorneys for Plaintiff

HARRISON PATTERSON & O'CONNOR LLP
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 29th Floor
 San Diego, CA 92101

Exhibit F

James R. Patterson, State Bar No. 211102
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Fax: (619) 756-6991

Attorneys for Plaintiff and the Class

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MARTIN PETERSEN, an individual, on behalf
of himself and all others similarly situated,

Plaintiff,

vs.

LOWE'S HIW, INC., a Washington
corporation; and DOES 1 through 50, inclusive,

Defendants.

CASE NO. CGC-11-509122

CLASS ACTION

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

**(1) VIOLATION OF CALIFORNIA
CIVIL CODE § 1747.08;**

(2) COMMON LAW NEGLIGENCE;

(3) INVASION OF PRIVACY; AND

(4) UNLAWFUL INTRUSION

Plaintiff Martin Petersen, on behalf of himself and all others similarly situated, complains and alleges upon information and belief based, among other things, upon the investigation made by Plaintiff by and through his attorneys, as follows:

I. INTRODUCTION

1. California Civil Code section 1747.08 generally states that when a merchant is engaged in a retail transaction with a customer, the merchant may neither (1) request personal identification information from a customer paying for goods with a credit card, and then record that personal identification information upon the credit card transaction form or otherwise; nor (2) require as a condition to accepting the credit card as payment the cardholder to provide the customer's personal identification information which the retailer causes to be written, or

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1 otherwise records upon the credit card transaction form or otherwise.¹

2 2. Defendants operate retail stores throughout the United States, including
 3 California. Defendants are engaging in a pattern of unlawful and deceptive business practices by
 4 requesting and recording personal identification information, including zip codes, from
 5 customers using credit cards at the point-of-sale in Defendants' retail establishments.

6 3. On information and belief, Defendants use the zip codes and additional
 7 information obtained from customers' credit cards, including their names, to obtain their
 8 residential home addresses. Defendants obtain credit card customers' addresses with the help of
 9 third-party vendors such as Experian or Acxiom that maintain proprietary software and databases
 10 containing hundreds of millions of individual consumers' contact information. These vendors
 11 typically require merchants to confirm that they have obtained customers' informed consent to
 12 utilize their personal identification information before it is shared with the vendor.

13 4. Defendants do not disclose their true intentions behind requesting customers' zip
 14 codes, including that it will be used to obtain customers' home addresses, or shared with third
 15 parties. Rather, Defendants rely on consumers' incorrect assumption that Defendants want their
 16 zip codes to verify their identities for security purposes and as part of the credit card transaction.
 17 But, on information and belief, Defendants are not using credit card customers' zip codes for
 18 security measures, and this information is certainly not necessary to process customers' credit
 19 cards.

20 5. Plaintiff does not seek any relief greater than or different from the relief sought
 21 for the Class of which Plaintiff is a member. If successful, this action will enforce an important
 22 right affecting the public interest and will confer a significant benefit, whether pecuniary or non-
 23 pecuniary, on a large class of persons. Private enforcement is necessary and places a

24 ¹ California Civil Code section 1747.08 states in relevant part:

25 "(a) Except as provided in subdivision (c), no person, firm, partnership, association, or corporation which accepts
 26 credit cards for the transaction of business shall do either of the following:

27 (2) Request, or require as a condition to accepting the credit card as payment in full or in part for goods or services,
 the cardholder to provide personal identification information, which the person, firm, partnership, association, or
 corporation accepting the credit card writes, causes to be written, or otherwise records upon the credit card
 transaction form or otherwise.

28 (b) For purposes of this section 'personal identification information,' means information concerning the cardholder,
 other than information set forth on the credit card, and including, but not limited to, the cardholder's address and
 telephone number."

disproportionate financial burden on Plaintiff in relation to Plaintiff's stake in the matter.

II. JURISDICTION AND VENUE

6. Plaintiff is informed and believes that defendant Lowe's HIW, Inc. is a Washington Corporation with its corporate headquarters in Mooresville, NC.

7. Plaintiff is a resident of California and entered into credit card transactions at one or more of Defendants' retail locations in California.

8. Defendants have accepted credit cards for the transaction of business throughout California, including in the County of San Francisco.

9. All injuries occurred in California, including the County of San Francisco, which has caused both obligations and liability to arise in the County of San Francisco.

A. Doe Defendants

10. Except as described herein, Plaintiff is ignorant of the true names of Defendants sued as DOES 1 through 50, inclusive, and the nature of their wrongful conduct, and therefore sues these DOE Defendants by such fictitious names. Plaintiff will seek leave of the Court to amend this complaint to allege their true names and capacities when ascertained.

B. Agency/Aiding And Abetting

11. At all times herein mentioned, Defendants, and each of them, were an agent or joint venturer of each of the other Defendants, and in doing the acts alleged herein, were acting within the course and scope of such agency. Each defendant had actual and/or constructive knowledge of the acts of each of the other Defendants, and ratified, approved, joined in, acquiesced and/or authorized the wrongful acts of each co-Defendant, and/or retained the benefits of said wrongful acts.

12. Defendants, and each of them, aided and abetted, encouraged and rendered substantial assistance to the other Defendants in breaching their obligations to Plaintiff and the Class, as alleged herein. In taking action, as particularized herein, to aid and abet and substantially assist the commissions of these wrongful acts and other wrongdoings complained of, each of the Defendants acted with an awareness of his/its primary wrongdoing and realized that his/her/its conduct would substantially assist the accomplishment of the wrongful conduct,

1 wrongful goals, and wrongdoing.

2 **III. CONDUCT GIVING RISE TO VIOLATIONS OF THE LAW**

3 **A. Plaintiff's Contact with Defendant**

4 13. On at least one occasion within the last 12 months, Plaintiff went shopping at one
5 of Defendants' retail stores located in the state of California.

6 14. Plaintiff proceeded to the cashiers' section of Defendants' store to pay for the
7 selected merchandise with a credit card.

8 15. During the credit card transaction, and as part of Defendants' policy, Defendants'
9 cashier requested personal identification information from Plaintiff in the form of Plaintiff's zip
10 code, without informing Plaintiff why the information was being requested.

11 16. Plaintiff believe the requested information was necessary to complete the credit
12 card transaction and provided Plaintiff's zip code to Defendants' cashier.

13 17. The cashier typed and recorded Plaintiff's zip code into an electronic cash register
14 at the checkout counter adjacent to both the employee and Plaintiff.

15 18. Plaintiff then completed the transaction with the cashier and left the store with the
16 purchased merchandise.

17 **IV. PLAINTIFF'S CLASS ACTION ALLEGATIONS**

18 19. Plaintiff brings this class action against Defendants, pursuant to California Code
19 of Civil Procedure section 382, on behalf of all persons from whom Defendants requested and
20 recorded personal identification information in conjunction with a credit card transaction in
21 California (herein referred to as the "Class"). Excluded from the Class are Defendants, their
22 corporate parents, subsidiaries and affiliates, officers and directors, any entity in which
23 Defendants have a controlling interest, and the legal representatives, successors or assigns of any
24 such excluded persons or entities.

25 20. The members of the Class are so numerous that joinder of all members is
26 impracticable. While the exact number of Class members is unknown to Plaintiff at this time,
27 such information can be ascertained through appropriate discovery, from records maintained by
28 Defendants.

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21. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all members is impracticable, the likelihood of individual Class members prosecuting separate claims is remote and individual Class members do not have a significant interest in individually controlling the prosecution of separate actions. Relief concerning Plaintiff's rights under the laws alleged herein and with respect to the Class as a whole would be appropriate. Plaintiff knows of no difficulty to be encountered in the management of this action which would preclude its maintenance as a class action.

22. There is a well-defined community of interest among the members of the Class because common questions of law and fact predominate, and Plaintiff's claims are typical of the Class claims.

23. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- a. whether Defendants requested zip codes from credit card customers;
- b. whether Defendants recorded credit card customers zip codes;
- c. whether Defendants' conduct violates California Civil Code section 1747.08;
- d. what was done with the collected information, including whether it was stored, sold, or otherwise disseminated to others; and
- e. the proper amount of civil penalties to be awarded to Plaintiff and the Class.

24. Plaintiff's claims are typical of those of the other Class members because Plaintiff, like every other Class member, was exposed to virtually identical conduct and is entitled to civil penalties in amounts of up to one thousand dollars (\$1,000) per violation pursuant to California Civil Code section 1747.08(e).

25. Plaintiff can fairly and adequately represent the interests of the Class, has no conflicts of interest with other Class members, and has retained counsel competent and experienced in class action litigation.

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FIRST CAUSE OF ACTION FOR VIOLATIONS OF
CALIFORNIA CIVIL CODE § 1747.08

26. Plaintiff refers to and incorporates by reference as though set forth fully herein paragraphs 1 through 25 of this Complaint.

27. California Civil Code section 1747.08 prohibits any corporation, which accepts credit cards for the transaction of business, from requesting the cardholder to provide personal identification information which the corporation then records in conjunction with a credit card transaction.

28. Defendants accept credit cards for the transaction of business. During the class period, Defendants had a policy of requesting and recording credit card customers' zip codes at the point-of-sale in Defendants' retail establishments. Zip codes constitute personal identification information for purposes of section 1747.08.

29. Plaintiff and the Class are entitled to civil penalties in amounts of up to one thousand dollars (\$1,000) per violation pursuant to California Civil Code section 1747.08(e).

SECOND CAUSE OF ACTION FOR NEGLIGENCE

30. Plaintiff refers to and incorporates by reference as though set forth fully herein paragraphs 1 through 29 of this Complaint.

31. Defendants owed a duty of care to Plaintiff and the Class to reasonably protect their personal identification information, including their zip codes, home addresses and payment information, and to reasonably inform them of Defendants' intended use of their zip codes for purposes not related to the completion of their credit card transactions with Defendants.

32. Defendants negligently failed to take reasonable steps to protect Plaintiff's and the Class' personal identifying information and payment information from being collected, stored and used without Plaintiff's and the Class' knowledge or consent.

33. Defendants negligently failed to take affirmative steps to alert Plaintiff and the Class of Defendants' intent to use their zip codes to obtain their home addresses and other private information.

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1 34. Defendants further negligently omitted to inform Plaintiff and the Class that it
2 would use their personal identification information for marketing, and that it would be sold or
3 otherwise disseminated to third parties.

4 35. On information and belief, Defendants also negligently failed to comply with
5 third-party vendor rules, which require Defendants to have customers' informed consent prior to
6 sharing their personal identification information with the vendors, or using this information to
7 obtain their home addresses from the vendors' proprietary databases of information.

8 36. On information and belief, Defendants negligently shared Plaintiffs and the Class'
9 personal identification information, including their zip codes and home addresses, with other
10 vendors and retailers, and without authorization.

11 37. Defendants knew, or reasonably should have known that Plaintiff and the Class
12 would not have provided their zip codes to Defendants, or even entered into credit card
13 transactions with Defendants, had Plaintiff and the Class known that Defendants intended to use
14 their zip codes to obtain their home addresses, which would then be stored and shared with
15 others.

16 38. Defendants' conduct has caused Plaintiff and the Class to suffer damages by
17 having their personal identification information accessed, stored, and disseminated without their
18 knowledge or consent, and because they have been placed at serious risk for harassment, fraud,
19 and identity theft from anyone that has, or may obtain access to their personal identification
20 information, including their zip codes, home addresses, and billing information.

21 39. At the time of Defendants' representations and omissions, Plaintiff and the Class
22 did not know that they were false, and were ignorant of the omitted and/or concealed facts. In
23 reliance on these misrepresentations and without the benefit of the material omissions, Plaintiff
24 and the Class entered into credit card transactions with Defendants and provided Defendants
25 with their personal identification information.

26 40. Reliance on Defendants' representations and omissions was justified because
27 Plaintiff and the Class had no reason to believe that Defendants would use their zip codes to
28 obtain their private home addresses, that this information would be stored and used by

1 Defendants, or that it would be disseminated and shared with others.

2 41. Plaintiff and the Class have been damaged by Defendants' negligent
3 misrepresentations in an amount to be proven at trial.

4 42. On information and belief, Defendants received, and continue to receive
5 substantial revenue from the unauthorized use and sale of Plaintiff's and the Class' personal
6 identification information. This constitutes unjust enrichment for Defendants and must be
7 disgorged, and restored to Plaintiff and the Class.

8 **THIRD CAUSE OF ACTION FOR INVASION OF PRIVACY**

9 43. Plaintiff refers to and incorporates by reference as though set forth fully herein
10 paragraphs 1 through 42 of this Complaint.

11 44. The constitutionally guaranteed right of privacy unequivocally includes the right
12 to control the dissemination of one's private personal information, including one's home address.

13 45. Plaintiff and the Class have legally protectable privacy interests in their home
14 address information, and their ability to control the disclosure and dissemination of this
15 information.

16 46. Plaintiff and the Class had reasonable expectations that their private home
17 addresses would remain private when they entered into credit card transactions with Defendants.
18 They were certainly not aware that Defendants would use their names (captured from their credit
19 cards) and zip codes to obtain their private home addresses.

20 47. Defendants did not disclose their intention to use Plaintiff and the Class' zip codes
21 to obtain their home addresses, and instead requested Plaintiff and the Class' zip codes under the
22 guise of needing them for security purposes and to complete their credit card transactions.

23 48. Defendants' actions constitute a "serious" invasion of privacy in that Plaintiff and
24 the Class have had their private home addresses accessed, shared, and sold to others without their
25 knowledge or consent. In addition to the unwanted dissemination of their private information,
26 Plaintiff and the Class have been placed at serious risk of harassment, fraud and identity theft as
27 a result of Defendants' conduct.

28 ///

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1 49. Plaintiff and the Class have been damaged by Defendants' conduct in an amount
 2 to be proven at trial.

3 50. Unless and until enjoined, and restrained by order of this Court, Defendants'
 4 wrongful conduct will continue to cause Plaintiff and the Class great and irreparable injury in
 5 that their private personal information, including their home addresses and billing information
 6 will remain at risk. Defendants will continue to use this unlawfully obtained information for
 7 their own purposes and profit, it will be sold and disclosed to others, and it may be stolen and
 8 used for identity theft and credit card fraud. Plaintiff and the Class have no adequate remedy at
 9 law for the injuries in that a judgment for the monetary damages will not end the invasion of
 10 privacy.

11 **FOURTH CAUSE OF ACTION FOR UNLAWFUL INTRUSION**

12 51. Plaintiff refers to and incorporates by reference as though set forth fully herein
 13 paragraphs 1 through 50 of this Complaint.

14 52. One who intentionally intrudes upon the solitude or seclusion of another or his
 15 private affairs or concerns is subject to liability for invasion of privacy. The Supreme Court of
 16 California instructs that the tort of intrusion is not limited to physical invasions, but also lies
 17 where the defendant "obtained unwanted access to data about the plaintiff."

18 53. Plaintiff and the Class had reasonable expectations that their personal
 19 identification information, including their private home addresses and billing information would
 20 remain private when they entered into transactions with Defendants. They had no idea that
 21 Defendants would use their zip codes to obtain their private home addresses, or that this
 22 information would be stored and used for Defendants' profit, and sold to others. Defendants did
 23 not disclose their intentions to use Plaintiff and the Class' zip codes to obtain their home
 24 addresses, and instead relied on Plaintiff and the Class' false assumption that their zip codes were
 25 a necessary security measure to process their credit card transactions.

26 54. The manner in which Defendants intruded upon Plaintiff and the Class' privacy
 27 rights is highly offensive to a reasonable person.

28 ///

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55. As a proximate result of the above acts, Plaintiff and the Class' personal identification information was used by Defendants for their own profit, and to the detriment of Plaintiff and the Class, resulting in damages in the amount to be proven at trial.

56. Unless and until enjoined, and restrained by order of this Court, Defendants' wrongful conduct will continue to cause Plaintiff and the Class great and irreparable injury in that their private personal information, including their home addresses and billing information will remain at risk. Defendants will continue to use this unlawfully obtained information for their own purposes and profit, it will be sold and disclosed to others, and it may be stolen and used for identity theft and credit card fraud. Plaintiff and the Class have no adequate remedy at law for the injuries in that a judgment for the monetary damages will not end this unlawful intrusion.

V. PRAYER FOR RELIEF

1. That the Court certifies this action as a class action appointing Plaintiff as the Class Representative and Plaintiff's counsel as Class counsel;

2. For an award to Plaintiff and to each member of the Class the civil penalty to which he or she is entitled under California Civil Code section 1747.08(e);

3. For general damages according to proof;

4. Restitution and disgorgement any ill-gotten profits from Defendants to the extent permitted by applicable law, together with interest thereon from the date of payment;

5. That the Court preliminarily and permanently enjoins Defendants from engaging in the conduct alleged herein;

6. Other injunctive and declaratory relief as may be appropriate;

7. For distribution of any moneys recovered on behalf of the Class of similarly situated consumers via fluid recovery or *cy pres* recovery where necessary to prevent Defendants from retaining the benefits of their wrongful conduct;

8. For an award of attorneys' fees as authorized by statute including, but not limited to, the provisions of California Code of Civil Procedure § 1021.5, and as authorized under the "common fund" doctrine;

9. For costs of the suit;
10. For prejudgment interest at the legal rate;
11. And for such other relief as the Court may deem proper.

Date: April 20, 2011

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